

**Freedman, John A.**

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**From:** Freedman, John A.  
**Sent:** Monday, September 10, 2018 7:51 AM  
**To:** 'Bailey, Kate (CIV)'; 'Federighi, Carol (CIV)'; 'Coyle, Garrett (CIV)'; 'Kopplin, Rebecca M. (CIV)'; 'Halainen, Daniel J. (CIV)'; 'Tomlinson, Martin M. (CIV)'; 'Ehrlich, Stephen (CIV)'  
**Cc:** zzz.External.SBrannon@aclu.org; zzz.External.PGrossman@nyclu.org; 'Colangelo, Matthew'; Bauer, Andrew; Gersch, David P.; Grossi, Peter T.; Weiner, David J.; Young, Dylan Scot; Kelly, Caroline; 'Saini, Ajay'; 'Goldstein, Elena'; zzz.External.DHo@aclu.org  
**Subject:** State of New York v. Department of Commerce, S.D.N.Y. 18-CV-2921; NYIC v. Department of Commerce, S.D.N.Y. 18-CV-5025: Meet & Confer Follow Up & Other Matters  
**Attachments:** Commerce Department Supplemental Searches.docx  
**Categories:** Business

Counsel --

Your note from Friday evening did not address several topics we asked you to address. There are also several other issues:

1. Mr. Gore's deposition: The DOJ production for materials from Mr. Gore (including his non-governmental accounts) should be completed prior to the start of Mr. Gore's deposition. We have been advising you to prioritize production of these materials for weeks. Please advise on status and when we will receive these materials. In addition, please advise on the status of the questions we have raised about your deliberative process assertions and when any withheld materials will be produced. Additionally, please advise by close of business today as to the attendees for the deposition.
2. Title 13: In your August 28 email, you advised that certain documents were being withheld (including 10382 and 10385) because they contained "2017 ACS data that are pre-release and cannot be released publicly until September 13." These documents (and any others impacted by similar issues) should be produced no later than Thursday.
3. Supplementation of the Administrative Record: Your email makes multiple misstatements about assurances you provided before we agreed to ask the Court to hold the fifth motion to compel in abeyance. During that call, you advised that there was potentially another 25 gigabytes of records that should have been produced as part of the Administrative Record, based on the supplemental search terms and custodians we suggested. As you know, Judge Furman's July 5 and July 23 order were clear that the Administrative Record was to be complete by July 26 and that no further extensions would be granted. Your clients' failure, in light of this order, to search for such custodians as Eric Branstad, Aaron Willard, or key personnel who assisted Dr. Abowd is inexplicable, as were the unduly narrow terms used to search for responsive records in the first instance. And your insistence on using the incorrect spelling for search terms, such as Mark Neuman's name (which he used to sign emails, AR 3709), does not inspire confidence that your clients can competently conduct searches.

During the call, we suggested that you propose alternate search terms that would reduce production burden on your client. Since you have refused to do so and your client seems unwilling to otherwise comply with Judge Furman's orders regarding completion of the record, we have attached the searches that should be run. If you believe that any specific search constitutes a burden, we would be willing to consider further refinements if you identify the search term and provide a custodian-by-custodian breakdown of the number of documents generated by each search term.

Because your client has already gathered materials from the custodians, we expect that the narrowed searches will be run today and that you will raise any issues of burden immediately. We also expect supplemental Administrative Record productions to be made on a regular basis and that you will provide regular reports on your clients' progress.

4. We are at impasse on the other issues discussed during Wednesday's meet and confer and raised on Friday's email and will be raising these issues with the Court.

Best regards,

John

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John A. Freedman

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Supplemental Searches

Commerce Department Witnesses

1. For custodians identified in August 15, 2018 Declaration of Michael Cannon ("Cannon Declaration") Exhibit A, run the following supplemental searches:

a. (Aliens or immigrants or illegals or noncitizen! or non-citizen! or Democrat!) and (census or apportionment or enumerate! or districting or redistricting or counting)

b. (Bannon or Koback or "Mark Neuman" or "Marc Neuman" or "Mark Neumann" or "Marc Neumann" or "Mark Newman" or "Marc Newman" or "Gene Hamilton" or "Eugene Hamilton" or "Zadronzy" or "Sherk")

2. For Earl Comstock and Wendy Teramoto only, run the additional search terms: "McHenry" or "Cutrona" or "Hankey"

3. For Eric Branstad, run searches 1.a and 1.b, the additional terms "Hankey" and "Cutrona," and the terms identified in Cannon Declaration Ex. B.

4. For Aaron Willard, run searches 1.a and 1.b, and the terms identified in Cannon Declaration Ex. B.

5. For Brian Lenihan, run searches 1.a, 1.b and the terms identified in Cannon Declaration Ex. B.

6. For David Langdon, run search 1.a and the searches identified in Cannon Declaration Ex. B.

7. For Sahra Park-Su, run search 1.a and the searches identified in Cannon Declaration Ex. B.

Census Bureau Witnesses

1. For Victoria Velkoff, run searches identified in Cannon Declaration Ex. B.

2. For David Raglin, run searches identified in Cannon Declaration Ex. B.